

IN RE: PETITION FOR ZONING VARIANCE
E/S Oakleigh Road, 594
S of c/l of Taylor Avenue
7817 Oakleigh Road
9th Election District
6th Councilmanic District
Legal Owner: Dennis C. Deigert,
Sr., et ux
Contract Purchaser: Keith A.
Randlett
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-38-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance from Section 1802.3.C.1 to permit 2 lot widths of 50 feet in lieu of the minimum 55 feet, as more particularly described on Petitioners' Exhibit 1.

The Petitioners, Legal Owners, Mr. and Mrs. Dennis C. Deigert, Sr., together with the Contract Purchaser, Keith A. Randlett, appeared and testified. Mr. Michael Kumulides and Ms. Diane Moebuis appeared as Protestants.

Testimony and evidence indicated that the subject property designated as Lots 1 and 2 on Petitioners' Exhibit 1, known as 7817 Oakleigh Road, consists of approximately 18,100 square feet +/-, zoned D.R.5.5. Lot No. 1 is currently improved with an existing family home and accessory garage and Lot No. 2 is currently unimproved.

The Contract Purchaser, Mr. Keith A. Randlett, is desirous of placing a single family dwelling on Lot No. 2 that is compatible with the homes in the neighborhood. He testified that, in view of the layout of this property, he would suffer an undue hardship and practical difficulty should the requested variance be denied.

Mr. Kumulides and Ms. Moebuis, Protestants, reside on Lot No. 1 which adjoins Lot No. 2's northern boundary line. Mr. Kumulides was concerned regarding his ability to get his vehicles to his rear yard once Lot No. 2 is developed. Mr. Kumulides submitted a location survey, marked Protestants' Exhibit No. 1, which indicates the current access driveway traversing the front portion of Lot No. 2 and entering the rear yard of Lot No. 1. Mr. Randlett testified that he would be willing to prepare a Deed of Easement which would afford the Protestants a 3 foot easement for the purpose of ingress and egress from the line of division between No. 304 and Lot No. 305 which is indicated on Exhibit B appended hereto. The Protestants indicated that this proposal was a satisfactory resolution to their concerns.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

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THIS DEED OF EASEMENT, Made this _____ day of October, 1989 in the year Nineteen Hundred Eighty Nine, by and between Dennis C. Deigert, Sr. and Janice A. Deigert, his wife, Parties of the First Part, and Michael G. Kumulides and Diane Moebuis, parties of the second part.

RECITALS

WHEREAS, the Parties of the First Part are the owners of that property located in Baltimore County, State of Maryland described as follows:

BEING KNOWN AND DESIGNATED as Lot Nos. 303 and 304 as shown on the plat entitled "Westmoreland Fruit Farm" which plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 102. The improvements thereon are known as 7817 Oakleigh Road (formerly Cowpens Avenue)

WHEREAS, the Parties of the Second Part are the owners of that property located in Baltimore County, State of Maryland described as follows:

BEING KNOWN AND DESIGNATED as Lot Nos. 305 and 306 as shown on the plat entitled "Westmoreland Fruit Farm" which plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 102.

WHEREAS, the Parties of the Second Part have requested an easement from the Parties of the First Part for the purpose of ingress and egress and the Parties of the First Part have agreed to grant such easement pursuant to the terms and conditions stated herein.

NOW, THEREFORE, WITNESSETH, that in consideration of the covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties of the First Part subject to the reservation hereinafter stated, do hereby grant and convey into the Parties of the Second Part, their personal representative, successors and assigns, a three (3) foot easement for the purpose of ingress and egress from the line of division between Lot No. 304 and Lot No. 305 of the aforementioned Plat and described as follows:

SEE EXHIBIT A ATTACHED HERETO

SUBJECT TO THE RESERVATION by the Parties of the First Part, their Personal Representatives, heirs and assigns, for the use in common of the aforescribed easement with the Parties of the Second Part, their Personal Representatives, heirs and assigns.

WITNESS the execution of this Deed of Easement by the Parties of the First Part.

WITNESS:

Dennis C. Deigert Sr.
Dennis C. Deigert, Sr.
Janice A. Deigert
Janice A. Deigert

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It is the opinion of the Zoning Commissioner that the deed of easement appended hereto cures any hardship that would be shifted from the Petitioners' property to the Protestants' property as the result of granting the requested relief. It has been established to the satisfaction of the Zoning Commissioner that the requirements from which the Petitioners seek relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 5th day of December, 1989 that the Petition for a Zoning Variance from Section 1802.3.C.1 to permit 2 lot widths of 50 feet in lieu of the minimum 55 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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Michael G. Kumulides

Diane Moebuis

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, TO WIT:

I HEREBY CERTIFY that on this 15th day of October, 1989, before me, the undersigned Notary Public of the State of Maryland, personally appeared Dennis C. Deigert, Sr. and Janice A. Deigert and acknowledged themselves to be the persons whose names are subscribed to the within document and that they executed the foregoing document for the purposes therein contained.

IN WITNESS My Hand and Notarial Seal.

Dennis C. Deigert Sr.
Notary Public

My Commission Expires: July 1, 1990

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 1989, before me, the undersigned Notary Public of the State of Maryland, personally appeared Michael G. Kumulides and acknowledged himself to be the person whose name is subscribed to the within document and that he executed the foregoing document for the purposes therein contained.

IN WITNESS My Hand and Notarial Seal.

Notary Public

My Commission Expires: July 1, 1990

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 1989, before me, the undersigned Notary Public of the State of Maryland, personally appeared Diane Moebuis, and acknowledged herself to be the person whose name is subscribed to the within document and that she executed the foregoing document for the purposes therein contained.

IN WITNESS My Hand and Notarial Seal.

Notary Public

My Commission Expires: July 1, 1990

2. The Petitioners may not apply for their building permit until the expiration of thirty (30) days from the date of this Order to provide Protestants an opportunity to review the attached Deed of Easement and execute same. Upon signing the Deed, Protestants shall deliver the Deed to Petitioners by certified mail for filing with Baltimore County Land Records. The Petitioners shall pay all filing and recording costs. Should the Protestants fail to deliver the signed Deed to Petitioners within the thirty days aforementioned, said Deed shall be voidable at the option of Petitioners.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

JRH:mmm
cc: Peoples Counsel
cc: Protestants

PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.3.C.1 to permit 2 lot widths of 50 feet in lieu of the minimum 55 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County for the following reasons: (Indicate hardship or practical difficulty in using the property as proposed by the zoning which provides for a single family dwelling in accordance with Baltimore County Code. Subject property is not capable of being developed, there by creating practical difficulty or hardship with regard to developability. The granting of this variance will not result in injury to public health, safety or welfare.)

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

Keith A. Randlett
(Type or Print Name)
Keith A. Randlett
Signature
6539 Corkley Rd.
Address
Baltimore, Md. 21237
City and State

Legal Owner(s):

Dennis C. Deigert Sr.
(Type or Print Name)
Dennis C. Deigert Sr.
Signature
Janice A. Deigert
(Type or Print Name)
Dennis C. Deigert
Signature

Attorney for Petitioner:

7817 Oakleigh Rd. 661-3437
Address
Baltimore, Maryland
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Dennis C. Deigert Sr.
7817 Oak Leigh Rd. 661-3437
Address

ORDERED By The Zoning Commissioner of Baltimore County, this 31 day

of May, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1989, at _____ o'clock

J. Robert Haines
Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING (1/2HR) (1HR)
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHER DATE 5/1/89
REVIEWED BY: mmk

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(801) 887-2553

J. Robert Haines
Zoning Commissioner

December 22, 1989



Mr. Michael Kumulides
Ms. Diane Moebuis
7817 Oakleigh Road
Baltimore, Maryland 21234

RE: Petition for Zoning Variance
Case No. 90-38-A

Dear Mr. Kumulides and Ms. Moebuis:

It is my understanding that you have informed Mr. Joseph Merrey of my office that your attorney has misplaced the original "Deed of Easement" and that a copy of same was not attached to the Order, per restriction No. 2. Be advised that it is your responsibility to contact the Petitioner to obtain another "Deed of Easement" for execution should this be your intent.

It is also my understanding that you intend to appeal this case. I would suggest that you resolve this matter promptly, as this correspondence will, in no way, affect the running of the appeal period regarding this matter.

Very truly yours,
J. Robert Haines
J. Robert Haines
Zoning Commissioner
for Baltimore County

JRH:mmm
cc: Mr. Keith A. Randlett
6539 Corkley Road
Baltimore, Maryland 21237

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 7-24-89



Dennis F. Rasmussen
County Executive

Re: Petition for Zoning Variance
CASE NUMBER: 90-38-A
E/S Oakleigh Road, 594' S of c/l of Taylor Avenue
7817 Oakleigh Road
9th Election District - 6th Councilmanic
Legal Owner(s): Dennis C. Deigert, Sr., et ux
Contact Purchaser(s): Keith A. Randlett
HEARING SCHEDULED: TUESDAY, AUGUST 8, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Deigert:

Please be advised that \$120.29 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the County Office Building fifteen (15) minutes before the hearing.

BALTIMORE COUNTY, MARYLAND No. 074658

OFFICE OF FINANCE - REVENUE DIVISION

CELLANEOUS CASH RECEIPT

DATE 7/24/89 ACCOUNT PAID TO

AMOUNT \$ 120.29

PAID TO C. Deigert Sr. et ux for

Keith A. Randlett

90-38-A

B 105*****12029** 1306F

VALIDATION OR SIGNATURE OF CASHIER

PRIN. AGENT YELLOW - CUSTOMER

CERTIFICATE OF PUBLICATION

TOWSON, MD. July 21, 1989
THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on July 30, 19 89.

THE JEFFERSONIAN
TOWSON TIMES.

S. Zeke Olson
Publisher

P013727
reg M31025
rs 90-38-A
price \$95.29

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

July 5, 1989

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-38-A
E/S Oakleigh Road, 594' S of c/l of Taylor Avenue
7817 Oakleigh Road
9th Election District - 6th Councilmanic
Legal Owner(s): Dennis C. Deigert, Sr., et ux
Contact Purchaser(s): Keith A. Randlett
HEARING SCHEDULED: TUESDAY, AUGUST 8, 1989 at 2:00 p.m.

Variances To permit 2 lot width of 50 ft. in lieu of the minimum 55 feet.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for a good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRH:s
cc: Mr. & Mrs. Deigert
Keith A. Randlett
et ux

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Office Building
Towson, Maryland 21204
(301) 887-3354

June 6, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 487, 488, 489, 491, 492, 494, 495, 496, 497, 498, and 499.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Assoc. II

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500
Paul H. Reinicke
Chief

June 1, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: Legal Owner: Dennis C. Deigert, Sr.

Location: E/S of Oakleigh Road, 594' S centerline of Taylor Avenue

Item No.: 494 Zoning Agenda: May 30, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: [Signature] Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/ker

90-38-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 31st day of May, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner: Dennis C. Deigert, Sr. Received by: James E. Dyer
Attorney: [Signature] Chairman, Zoning Plans
Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 31, 1989

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Mr. Keith A. Randlett
6539 Corkley Road
Baltimore, MD 21237

RE: Item No. 494, Case No. 90-38-A
Petitioner: Dennis C. Deigert, et ux
Petition for Zoning Variance

Dear Mr. Randlett:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development made aware of plans or problems with regard to the development made aware of plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

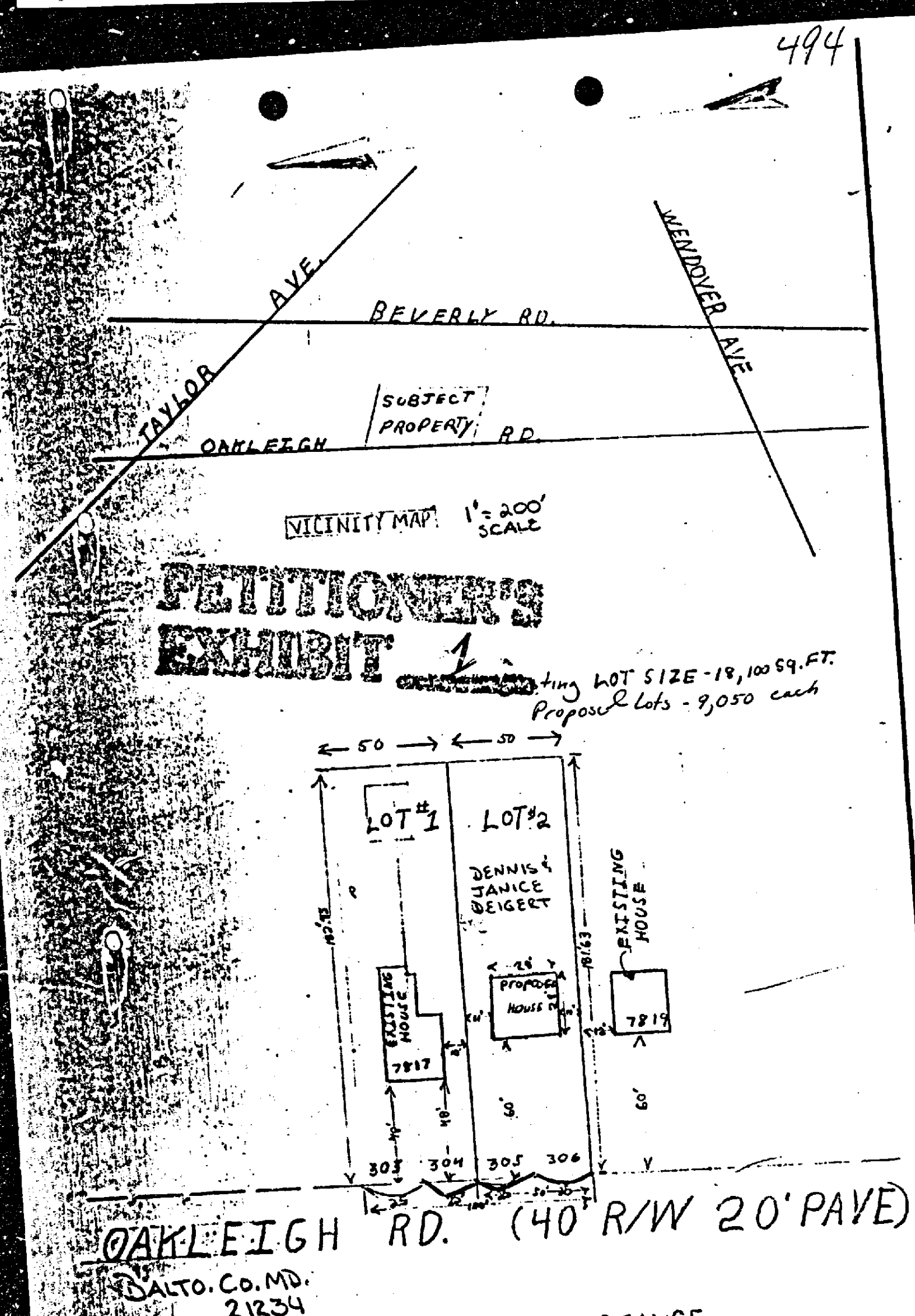
IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer
Chairman
Zoning Plans Advisory Committee

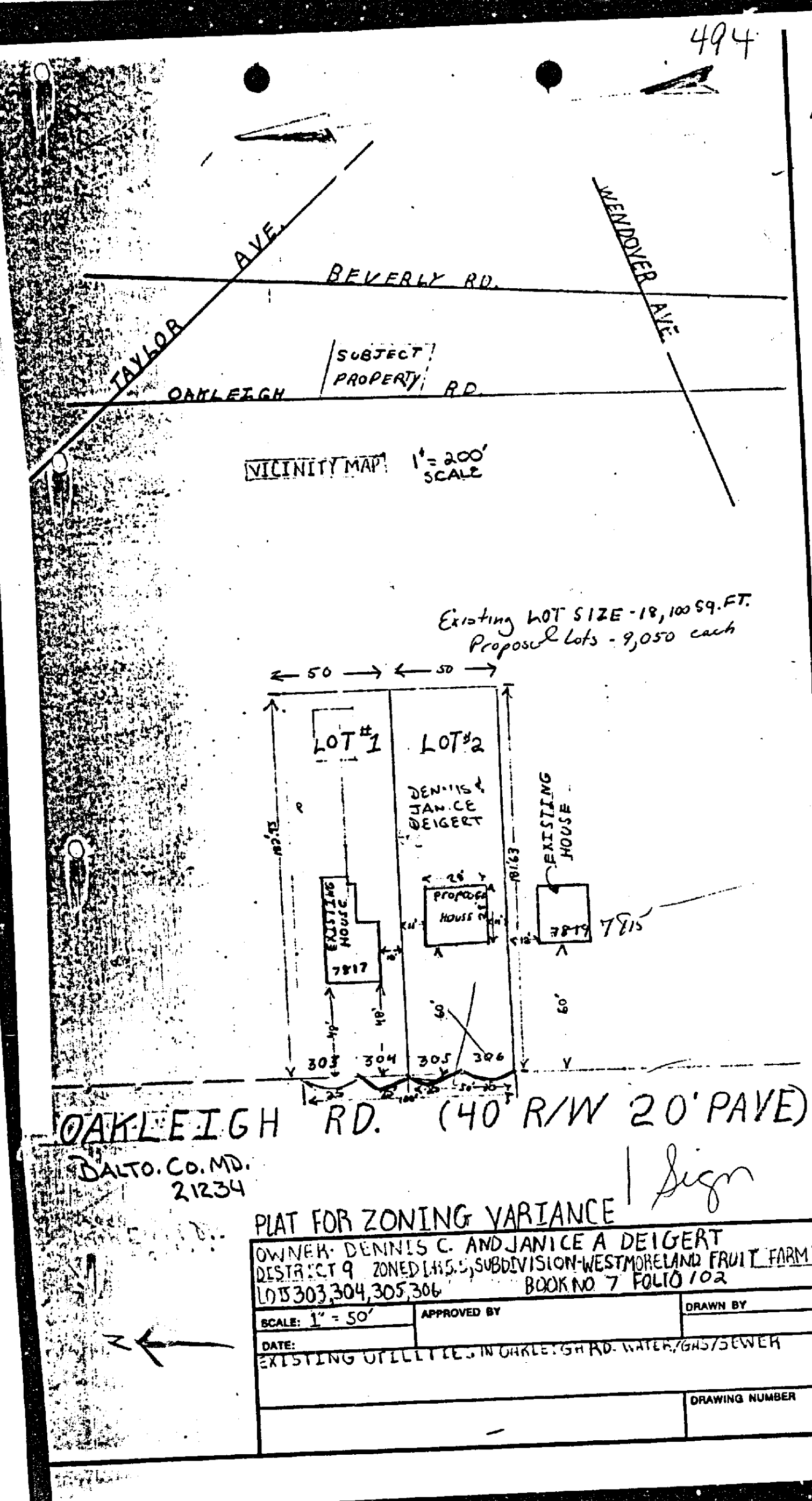
JED:jw

Enclosures

cc: Mr. & Mrs. Dennis C. Deigert, Sr.
7817 Oakleigh Road
Baltimore, MD 21234



PLAT FOR ZONING VARIANCE
OWNER: DENNIS C. AND JANICE A. DEIGERT
DISTRICT 9 ZONED L45.5 SUBDIVISION WESTMORELAND FRUIT FARM
103303304 305306 BOOK NO 7 FOLIO 102
SCALE: 1" = 50' APPROVED BY: [Signature] DRAWN BY: [Signature]
DATE: [Blank] EXISTING UTILITIES IN OAKLEIGH RD. WATER/GAS/SEWER
DRAWING NUMBER: [Blank]



PLAT FOR ZONING VARIANCE
OWNER: DENNIS C. AND JANICE A. DEIGERT
DISTRICT 9 ZONED L45.5 SUBDIVISION WESTMORELAND FRUIT FARM
103303304 305306 BOOK NO 7 FOLIO 102
SCALE: 1" = 50' APPROVED BY: [Signature] DRAWN BY: [Signature]
DATE: [Blank] EXISTING UTILITIES IN OAKLEIGH RD. WATER/GAS/SEWER
DRAWING NUMBER: [Blank]